IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION

CHAMBER SUMMONS NO.42 OF 2007
IN
MISC. PETITION NO.27 OF 2003
IN
TESTAMENTARY PETITION NO.1 OF 2002

Dr.(Miss) Usha Vasant Bagwe ....Deceased

Ravi Maruti Shingre ....Petitioner
V/s.
Ratnakar V. Bagwe, .
(since deceased) .
Suman R. Bagwe & Ors. ....Respondents

Mr.G.N. Salunke for the Petitioner.

Mr.B.G. Saraf for the Respondents.

CORAM : S.J. VAZIFDAR, J.
DATED : 13TH JULY, 2007.

P.C. :

1. The above Chamber Summons is misconceived. The Petitioner alleges to be an adopted son of the deceased. He further alleges that the deceased left a Will under which he is the sole beneficiary inter-alia in respect of the immovable property.

2. The original Respondent was the brother of the deceased. The present Respondents are the heirs of the original Respondent. There were disputes between the original Respondent and the deceased even

during their life time. The deceased had filed a suit bearing Suit No.176 of 1979 against the original Respondent for possession. In Notice of Motion No.147 of 1979 taken out by the deceased in that suit, the learned Judge by an order dated 26.7.1979 permitted the original Respondent to continue in occupation on payment of a sum of Rs.200/- per month commencing from 1.7.1979. The original Respondent was further restrained from alienating, encumbering, parting with possession of etc. the property in his occupation. It is only in the event of there being any default by the original Respondent that the Court Receiver was to stand appointed. Even in such circumstances, the original Respondent was entitled to continue as an agent of the Court Receiver on the terms and conditions to be fixed by the Court Receiver.

3. The Petitioner alleges that there were defaults on the part of the original Respondent in payment of a sum of Rs.200/- per month as required by an order dated 26.7.1979. Even assuming that was so, the remedy of the Petitioner was to have adopted appropriate proceedings in Suit No.176 of 1979.

4. In any event even on merits there is no case. The property, according to the Respondents belonged to

the father of the original Respondent and the deceased. There is a serious dispute regarding the entitlement of the deceased to have bequeathed the said property. There is no question therefore of affecting the possession of the Respondents in any manner whatsoever.

5. Further even assuming that there were arrears of the alleged default in payment of Rs.200/- per month, the same was clearly bona-fide. The default apparently occurred for a short while during the death of the original Respondent himself. The entire amount has now been paid. In any event, even if there are any arrears, the same shall be paid within eight weeks from today.

6. The rights of the Respondents cannot possibly be affected in the present proceedings. In the circumstances, the Chamber Summons is dismissed.